

ENTERED
Office of Proceedings
May 8, 2023
Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB 1329X

ELKHART & WESTERN RAILROAD CO. LLC
-DISCONTINUANCE OF TRackage RIGHT EXEMPTION –
IN MARSHALL AND FULTON COUNTIES, INDIANA

REPLY OF FULTON COUNTY, LLC D/B/A FULTON COUNTY RAILROAD
TO PETITION FOR DISCONTINUANCE EXEMPTION

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

*Attorneys for Fulton County, LLC d/b/a
Fulton County Railroad*

Dated: May 8, 2023

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On March 24, 2023, Elkhart & Western Railroad Co. LLC (“E&W”) filed a petition for exemption (the “E&W Petition”) to discontinue trackage rights over the 11.7-mile rail line owned by Fulton County, LLC (“FCRR”).¹ On April 13, 2023, the Board issued a notice (the “April 13 Notice”) of the filing of the E&W Petition. The April 13 Notice provided that replies to the E&W petition were due by May 3, 2023.

Concerned about some of the representations made by E&W in its petition, in accordance with 49 CFR §1114.30, FCRR served a limited set of document requests on E&W on April 17, 2023, asking for responses by May 1, 2023. On April 28, 2023, the Friday before the May 1 requested response date, counsel for E&W advised counsel for FCRR that E&W would not provide any documents in response to the document request.

On May 2, 2023, FCRR promptly filed a motion to compel responses to its discovery requests, and a request for an extension of time for the filing of replies until after the discovery was produced. By decision served May 3, 2023 (the “May 3 Decision”), the Office of

¹ Fulton County, LLC does business as Fulton County Railroad.

Proceedings on behalf of the Board extended the deadline for replies to and including May 8, 2023. FCRR timely files this Reply in accordance with the May 3 Decision.²

BACKGROUND

FCRR acquired the Line from a predecessor of Norfolk Southern Railway Company (“NS”) in 1997³ and provided service on the Line for about 13 years. NS granted FCRR interchange rights over the approximately 1.1 miles of track between the end of the Line and NS’s Argos Yard where interchange between NS and FCRR took place.⁴

In 2011 FCRR and E&W entered into a local trackage rights agreement (the “TRA”), authorized by the Board, under which E&W had the right to serve the customers on the Line.⁵ The TRA requires E&W to maintain the Line in its then current condition.⁶ E&W used the FCRR interchange rights to interchange traffic to and from the Line with NS in Argos Yard. Although FCRR retained its operating rights as the owner of the rail Line, E&W has been the exclusive provider of rail service on and over the Line since that time (E&W Petition at 1-2), and FCRR did not retain any railroad employees or equipment.

E&W entered into an amended lease with NS in 2020 which, among other items, added the connecting interchange track to E&W’s lease. Following the lease amendment, E&W no longer had the need to use the FCRR interchange rights to move traffic to and from the Line to

² In filing this Reply, FCRR has not had the benefit of receiving and reviewing any of the documents requested in discovery from E&W and Patriot. FCRR requests that, as suggested in the May 3rd Decision, any future decision of the Board on the motion to compel provide FCRR the opportunity to supplement this Reply.

³ *Fulton County, L.L.C. – Acquisition and Operation Exemption – Norfolk and Western Railway Company*, STB Finance Docket No. 33477 (Oct. 31, 1997).

⁴ *Id.*, slip op. at 1.

⁵ *Elkhart & Western Railroad Co. – Trackage Rights Exemption – Fulton County, LLC, d/b/a Fulton County Railroad*, STB Finance Docket No. 35453 (served Feb. 9, 2011).

⁶ The TRA acknowledges, and the parties accepted, that the Line was in “excepted condition.”

Argos Yard. Notwithstanding, NS has advised FCRR that the E&W amended lease was made subject to the continuing right of FCRR to use the now leased track for interchange with NS.

E&W notes that the TRA expired on March 15, 2023, after being extended by the parties. (Petition at 2-3.) FCRR and E&W (and later its new owner Patriot Rail, LLC (“Patriot”) had discussed a new or amended agreement under which E&W would continue operating the Line. However, when it became clear to FCRR that the parties would not be able to reach an acceptable agreement, FCRR decided to create a new affiliate to take over operations of the Line on behalf of FCRR. FCRR requested that E&W agree to further extend the TRA to allow for an orderly transition; however, E&W and Patriot did not agree to any such extension.

E&W continued to serve the customers on the line through Tuesday, March 14. Although there was no incident or change in condition of the track, E&W abruptly issued an embargo (the “Embargo”) of its service on the Line on March 16. A copy of the embargo notice is attached as **Exhibit A**. Given that the Embargo listed the duration as one year, it is clear that E&W had no intention of making any necessary repairs to reopen the Line for service. E&W followed the issuance of the Embargo by filing the E&W Petition seeking discontinuance authority on March 24, 2023.

In the meantime, on March 22, 2023, Rochester & Erie Railway, LLC (“RERY”), the new affiliate that FCRR created to take over operations of the Line on behalf of FCRR, promptly filed with the Board for authorization to operate the Line on behalf of FCRR, and that authority became effective on April 21, 2023. RERY made some minor repairs to the Line, and since April 21 has sought to operate over the connecting tracks under the reserved interchange rights. These efforts have been obstructed and delayed by E&W. First, E&W demanded changes to the amended interchange agreement that RERY and NS had executed to cover the interchange rights

NS had reserved in the E&W amended lease, and then E&W delayed executing the amended interchange agreement that included E&W's changes. Further, despite demanding that RERY personnel be qualified to operate over the connecting interchange track, E&W has delayed providing a qualifying exam, despite promising to provide it almost every day since April 24, 2023.⁷ These actions (or inactions) have delayed RER's ability to restore service, and the ability of shippers on the Line to receive rail service, for the past two weeks,

REPLY

FCRR is filing this Reply to respond to false, misleading (incomplete) and unsubstantiated representations in the E&W Petition to ensure that the Board's decision on the E&W Petition (a) will be based on the actual facts related to the proposed discontinuance and not based on E&W's misrepresentations, and (b) does not inadvertently include findings that would preclude future challenges based on E&W's misrepresentations.

I. E&W maintains its common carrier obligation until the Board authorizes discontinuance.

It is clear under Board and Interstate Commerce Commission precedent that E&W's service rights and obligations under the TRA continue despite the expiration of the TRA unless and until the Board authorizes E&W to discontinue its operations. *See North Carolina Railroad Company—Petition to Set Trackage Compensation and Other Terms and Conditions—Norfolk Southern Railway Company*, STB Finance Docket No. 33134 (served May 29, 1997, slip op. at 3 (citing *Thompson v. Texas Mexican R. Co.*, 328 U.S. 134, 147-50 (1946)).⁸ The Board's

⁷ Although RERY was willing to take the E&W qualifying exam, it does not believe that the FCRR-NS interchange arrangements require RERY to be qualified by E&W over the tracks. RERY has been qualified to operate over NS tracks and in Argos Yard.

⁸ Service obligations can be temporarily suspended by a properly issued embargo. Whether E&W's embargo was properly issued is a separate question that is discussed more fully below and could be the subject of a separate proceeding before the Board.

decision on the E&W Petition should make clear that E&W's common carrier obligations continue until if and when the Board authorizes E&W's discontinuance.

II. The E&W Petition relies upon misrepresentations.

A. The condition of the Line

In Section II of the E&W Petition, E&W claims that its new owner Patriot assessed the Line and found it to be in an unsafe condition, and that the unsafe condition had existed for some time. Patriot and E&W justify their embargo of the Line on this purported "deteriorated condition." E&W Petition at 3-4. E&W also asserts that the Line needs "substantial track rehabilitation." *Id.* At 7. While speaking of the deteriorated condition, the E&W Petition does not assert any sudden physical impairment or incident that made the Line unsafe to operate.

As the E&W Petition notes at p.7 n.8, FCRR and E&W disagree regarding which party is responsible any deterioration of the condition of the Line given that E&W has been the sole operator of the Line and has had the sole maintenance responsibility since the TRA was entered into in 2011. Moreover, FCRR believes that E&W has misrepresented the current condition of the Line and the amount and type of repairs necessary for safe operation of the Line. After all, E&W was regularly operating over the Line two days per week up until just before the Embargo was issued. Once it became clear that E&W was not going to provide service any longer,⁹ RERY reviewed the track condition and needed to perform only minor repairs in preparation for it to take over operations of the Line on behalf of FCRR. It is clear that E&W could have restored service pending RERY being authorized and set up to assume operation of the Line.

⁹ The Embargo by its terms is set to expire after one year, which would be well beyond E&W's planned discontinuance time. Moreover, the E&W Petition, p. 4, makes clear that FCRR would need to make any repairs it thought were necessary.

B. Harm to shippers

The ultimate discontinuance of E&W's service on the Line adversely affected shippers on the Line. FCRR and RERY have been trying to mitigate that harm by seeking to resume service as quickly as possible. In any event, E&W's conduct and failure to meet its common carrier obligations have certainly harmed shippers on the Line who were left without service beginning March 15, 2023.

1. The Embargo was not justified.

Patriot and E&W abruptly issued the Embargo on March 16, 2023, the day after the TRA expired, and only two days after the last service by E&W on the Line, with the Embargo effective immediately. This was clearly an attempt to discontinue operations without waiting for the Board to authorize such discontinuance, and to punish FCRR and the shippers on the Line for not entering into a new or amended agreement with E&W. As noted above, Patriot and E&W point only to purported general deterioration of the Line and not to any sudden physical impairment.

The rules for issuing embargoes are set forth in AAR Circular TD-1 (the "Circular"). A copy of the Circular is attached as **Exhibit B** for ease of reference. The Circular explains the purpose of an embargo in Section I.A: "An embargo is a method of controlling Traffic movements when, in the judgment of the serving railroad, an actual or threatened Physical or Operational Impairment, of a temporary nature, warrants restrictions against such movements." Embargoes may not be used as a "permanent measure to control traffic." Circular, Section II.A.1. The Circular further provides in Section IV.A (emphasis added):

An embargo may be "effective immediately" only if it is due to the issuance of a security alert requiring an embargo; the inability of the consignee to receive a shipment due to the closure of the facility in response to a local, state, or federal government order; the sudden occurrence of a Physical Impairment that would

make the rendering of service impossible or highly impracticable (e.g., natural disasters, damage or destruction of railroad facilities such as bridge fires, accidents, spontaneous labor or civil activism action(s) rendering a location or facility inaccessible); or the imminent occurrence of such a Physical Impairment (e.g., approaching hurricane, rising floodwaters). An "effective immediately" embargo may not be issued for other Physical Impairments or for Operational Impairments of any kind.

The Board has summarized how embargoes may be used, and what a carrier's obligations are when imposing an embargo:

Under 49 U.S.C. 11101(a), railroads have a duty to provide service on reasonable request. An embargo of service is permitted as an emergency measure when for some reason a railroad is unable to perform its duty as a common carrier. Although a valid embargo temporarily excuses the duty to provide service on reasonable request, it does not permanently eliminate the common carrier obligation under 49 U.S.C. 11101(a). To be relieved of its common carrier obligation, a railroad must seek discontinuance or abandonment authorization under 49 U.S.C. 10903. Thus, a valid embargo is an appropriate defense to an action for a breach of the common carrier's duty, but an embargo cannot be used by a railroad to unilaterally abandon or discontinue service on a line at its own election.

Bar Ale, Inc. v. California Northern Railroad and Southern Pacific Transportation

Company, STB Finance Docket No. 32821 (served July 20, 2001) ("*Bar Ale*"), slip op.

at 6 (emphasis added; footnotes omitted).

Here there was no sudden impairment that would justify an immediate embargo. This was merely Patriot and E&W unilaterally deciding to discontinue service at their own election without waiting for the Board to grant discontinuance authority.

E&W misleadingly says that FCRR could resume operations any time it wanted to (E&W Petition at 4), knowing full well that FCRR has no operating employees or equipment as a result of E&W being the sole operator since 2011, and that RERY would not have authority to operate until April 21, 2023. E&W blames FCRR and RERY for failing to file at an earlier date prior to the expiration of the TRA, but FCRR and RERY did not know that E&W would

unilaterally cease providing service. Moreover, E&W's attempts to shift blame do not explain why if it wanted to stop service as of the expiration date, it did not file for discontinuance authority well before the expiration date.

Thus, it is clear that the issuance of the Embargo was improper, and the cessation of service caused harm to shippers on the Line.¹⁰

2. Even if the Embargo were properly issued, it was improperly continued.

As noted above, embargoes are intended to be temporary. As the Board has explained:

[T]o be valid, an embargo must at all times be reasonable. Whether an embargo is reasonable is determined by balancing a number of factors, including the length of the service cessation, the intent of the railroad, the cost of repairs, the amount of traffic on the line, and the financial condition of the carrier.

Bar Ale, supra, slip op at 6-7. So even if the Embargo were properly issued, Patriot and E&W's clear intent not to make any repairs to the Line, and their failure to make the minimal repairs necessary to make the Line safe for service (as demonstrated by the work that RERY has now performed), demonstrate that the continuation of the Embargo was not valid and, instead was intended to punish FCRR (and the shippers) for FCRR's decision not to extend service with E&W. The extended period of lack of service certainly harmed shippers on the Line.

¹⁰ Jason Grube who indirectly controls FCRR and has provided the Verification to the Reply, also controls Rochester Iron & Metal, the largest shipper on the Line, and has personal knowledge of the harm suffered by shippers on the Line.

3. E&W has improperly interfered with FCRR/RERY's reinstitution of rail service by not cooperating in allowing RERY to use the NS reserved interchange rights.

E&W's claims that shippers will not be harmed because they will (eventually) have service from another carrier. This would have been true if E&W had continued providing service in accordance with its common carrier obligations until it received discontinuance authority or until RERY began operations. However, that is not the situation here. Instead, E&W abruptly stopped providing service and failed to make any attempt to return the Line to service. And E&W's actions since RERY has been authorized to operate has frustrated the use of the necessary interchange rights over E&W's leased line to Argo Yard by requesting liability changes to the FCRR-NS amended interchange agreement and then not executing the agreement, and by not timely providing RERY with the qualification exam it requested that RERY complete. These delays caused shippers to be harmed significantly by depriving them of rail service for additional weeks.

C. E&W has not demonstrated that Federal regulatory control is not necessary.

While it is a goal of the rail transportation policy as set forth in 49 USC 10101(2) to minimize the need for Federal regulatory control, E&W's disregard of its common carrier obligations raises issues as to whether full regulatory control is required. E&W's common carrier obligations to operate the Line continued despite the expiration of the TRA. In disregard of these obligations, E&W has taken actions to unilaterally discontinue operations without waiting for Board approval. It improperly imposed an immediate embargo and took no steps to restore service. Moreover, it has interfered with and delayed the transition of service to another carrier. All of these actions have harmed the shippers on the Line.

CONCLUSION

FCRR requests that Board consider this Reply in determining whether E&W is entitled to seek a petition for exemption for discontinuance. FCRR further requests that any Board order granting discontinuance (1) specifically acknowledge that E&W's common carrier obligations continued despite the expiration of the TRA and despite the filing of the E&W Petition through and until the Board authorizes discontinuance, and (2) not include any findings that the Embargo was properly issued or maintained, that the Line needed substantial repairs, or that customers on the Line were not harmed by E&W's abrupt cessation of service on March 15 and during the pendency of the E&W Petition.

Respectfully submitted,

/s/ Eric M. Hocky

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

*Attorneys for Fulton County, LLC d/b/a
Fulton County Railroad*

Dated: May 8, 2023

VERIFICATION

I, Jason W. Grube, Manager of Fulton County, LLC d/b/a Fulton County Railroad, LLC, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on May 8, 2023.



Jason W. Grube

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Reply was served by email on
counsel for Elkhart & Western Railroad Co. LLC and Patriot Rail Company, LLC:

Robert A. Wimbish
rwimbish@fletcher-sippel.com
Thomas J. Healy
THealey@fletcher-sippel.com
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208

/s/ Eric M. Hocky

Eric M. Hocky

Dated: May 8, 2023

EXHIBIT A

EMBARGO NOTICE

EWR-ELKHART & WESTERN RAILROAD CO

Embargo Number: EWR000123

Status: Approved

Effective Date: 03-16-2023

Expiration Date: 03-16-2024

Allow Permit: No

Tier 2 Effective Date: 03-19-2023

Original Effective Date:

Roads Invited to Participate: UP,NS

Original Requester : David Strezo - Ph: 1.8159167013 - Email: dstrezo@pioneer-railcorp.com

Bypass Local Waybills: No

Operating Station Notice: No

Effective Immediately: No

Include Empty Revenue Cars: Yes

Include All Empty Cars: No

Minimum Car Allowed:

Maximum Car Allowed:

Commodities: Target All Commodities

Geography:

Included Locations:

Origin:

EWR-00600, ROCHESTER, IN

Destination: *

UNI-DIRECTIONAL

Umler Equip. Type : Target All Umler Equipment Types

No Weight Restrictions

Except These Cars: No Cars In Exception List

Embargo/OPSL Umler Element Status: No Umler Element

Clearance Code: No Clearance Code

Waybill Parties:

Include Any of These Waybill Parties:

Ship From, Pick Up, Shipper, Consignee, Care Of Party - 0216267470000 - ROCHESTER IRON & METAL INC - null, ROCHESTER, IN

Ship From, Pick Up, Shipper, Consignee, Care Of Party - 1023521350000 - WILSON FERTILIZER & GRAIN CO - null, ROCHESTER, IN

Ship From, Pick Up, Shipper, Consignee, Care Of Party - 7941088080000 - PRAIRIE MILLS PRODUCTS LLC - null, ROCHESTER, IN

Include Missing Waybill Parties: Yes

Cause: Track Conditions

Cause Detail:

Note:

By direction of the Safety and Operations Department, Association of American Railroads.
Specific contact information can be found in the TD-1 Circular
(<https://public.railinc.com/sites/default/files/documents/TD-1.pdf>).

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AAR Embargo/OPSL Notes And Permit System (<https://embargo.railinc.com>)

EXHIBIT B

AAR CIRCULAR TD-1



Association of American Railroads
Safety and Operations • Business Services
425 Third Street, SW • Washington, D.C. 20024

CIRCULAR No. TD-1

IN EFFECT AS OF JANUARY 1, 2021
EXCEPT AS NOTED
CODE OF CAR SERVICE RULES/CODE OF CAR HIRE RULES

PREAMBLE

The Rules contained herein do not foreclose subscribers from entering into other agreements which may differ from these rules.

Note: Substantive changes are highlighted in **yellow**.

TO: TRANSPORTATION OFFICERS--ALL RAILROADS

The following instructions shall govern the placing and handling of embargoes:

This circular provides instructions for the placing of embargoes and for the handling of embargoed traffic. It does not establish standards for determining whether an embargo is lawful or unlawful. The party placing an embargo is responsible for compliance with all applicable laws and regulations.

I. DEFINITIONS

- A. An embargo is a method of controlling Traffic movements when, in the judgment of the serving railroad, an actual or threatened Physical or Operational Impairment, of a temporary nature, warrants restrictions against such movements.
- B. For the purpose of this Circular, "Traffic" is defined as follows
 - 1. Loaded and revenue empty freight cars, trailers and/or containers.
 - 2. In the case of a disaster in which damage or destruction of railroad facilities such bridge fires, accidents, or the imminent occurrence of such a physical impairment (for example, the approaching hurricane, rising floodwaters) all rail equipment including railroad and privately-owned freight cars, trailers and/or containers.
 - 3. In the case of government action or civil activism actions that render facilities impractical or impossible to reach all rail equipment including railroad and privately-owned freight cars, trailers and/or containers.
 - 4. Empty privately-owned equipment may be embargoed in the case where an individual customer is experiencing congestion and alternate empty disposition is not received as outlined in [AAR Circular OT-57](#). Railroad owned or controlled non-revenue, empty freight cars, trailers and/or containers may not be embargoed due to congestion.

II. PROHIBITIONS

- A. It is prohibited to issue embargoes:
 - 1. As a permanent measure to control traffic.
 - 2. At the request of a consignee.
 - 3. As a commercial measure to control the routing of Traffic to or via any particular gateway, railroad or destination which is not related to the existence of the impairment.
 - 4. Against acceptance of Traffic on specified days.
 - 5. Limiting the amount of Traffic to be accepted daily or periodically.
 - 6. Against Traffic consigned to the United States Government, its authorized agents or officers, except when the Physical or Operational impairment prevents movement of such Traffic.
 - 7. Against a consignor or consignee for failure to pay freight charges and/or demurrage.
 - 8. Enforce terms of a contract or interchange agreement between railroads.
 - 9. De-market traffic.
 - 10. Restrict business growth.

- B. It shall not be permissible to maintain an embargo against:
 - 1. Traffic for railroads or parts thereof, or stations, which are being abandoned or to which service is being discontinued, except as a temporary measure, to be kept in effect only until appropriate revisions of pricing documents of affected stations can be accomplished.
 - 2. Acceptance of Traffic by reason of weight or clearance limitations, except as a temporary measure, pending publication of restrictions in Official List of Open and Prepay Stations / Railinc Centralized Station Master Notes.

III. PROCEDURE

When necessary to restrict Traffic movements, for periods in excess of 24 hours, an embargo must be used. It is the responsibility of a Railroad experiencing an Operational or Physical Impairment to place its own embargo rather than wait for such action by its connections. An embargo placed against an individual consignee is applicable to Traffic consigned, re-consigned or intended, as well as Traffic billed "shippers order", for that consignee.

- A. Carriers placing, amending, or canceling an embargo must notify the AAR and use the AAR Embargo and Permit System. The Association of American Railroads will transmit via email or XML notices of embargoes placed, amended, or cancelled to each full member railroad's designated embargo officer named in the AAR electronic Embargo Officer Registration File, to the Surface Transportation Board and the American Short Line and Regional Railroad Association. The AAR will provide an electronic subscription service for daily embargoes to other interested parties upon request. Instructions to submitters are contained in www.aar.org under RR Industry Info -Embargoes site.
- B. Each railroad shall designate an officer to issue and receive embargoes, whose name, title, and address must be published in the Official Railway Equipment Register, the AAR Embargo/OPSL Permit System application at <https://embargo.railinc.com/#/home> and the AAR electronic Embargo Office Registration File.
- C. Embargoes against a consignee shall be placed by the railroad performing the switching service or by a connecting road haul carrier for traffic it delivers to the switching carrier for that consignee. If served by more than one road, a consignee may be embargoed by each such road.
- D. If in the judgment of the Association of American Railroads an emergency exists, it may issue an embargo without a prior request by the serving or switching carrier(s) involved. The AAR will contact the affected railroads in advance of issuing the embargo.
- E. The Association of American Railroads will issue an embargo, at the request of the Surface Transportation Board.
- F. Embargoes will remain in effect until cancelled but, unless cancelled, will automatically expire one year after effective date of issuance. No expiration date shall be stated in the embargo. (See [VIII. REISSUANCE](#)).
- G. An embargo shall contain the following information, as necessary to ensure the embargo will be properly applied: (i) if the embargo is station specific, a list of the affected stations, by Freight Station Accounting Code as defined in the Railinc [Centralized Station Master \(CSM\)](#); (ii) if the embargo is directed at a gateway or territory, a description of the affected gateway or territory by city, state or province, (iii) commodities embargoed and their [Standard Transportation Code\(s\)](#) (or state "all commodities"); (iv) if the embargo is customer specific the railroad embargo officer must supply by [Customer Identification File \(CIF\)](#) Number, the customers consigned, re-consigned or intended to be embargoed; (v) embargo cause; and (vi) any exceptions to the embargo.

IV. EFFECTIVE DATE

The body of the embargo shall state a specific date, not earlier than date submitted via the AAR Embargo and Permit System to the Association of American Railroads, on which the embargo is to become effective.

- A. An embargo may be "effective immediately" only if it is due to the issuance of a security alert requiring an embargo; the inability of the consignee to receive a shipment due to the closure of the facility in response to a local, state, or federal government order; the sudden occurrence of a Physical Impairment that would make the rendering of service impossible or highly impracticable (e.g., natural disasters, damage or destruction of railroad facilities such as bridge fires, accidents, spontaneous labor or civil activism action(s) rendering a location or facility inaccessible); or the imminent occurrence of such a Physical Impairment (e.g., approaching hurricane, rising floodwaters). An "effective immediately" embargo may not be issued for other Physical Impairments or for Operational Impairments of any kind.
 - 1. An "effective immediately" embargo shall become effective at the time it is made available to other railroads on the AAR Embargo and Permit System (the "Effective Time").
 - 2. An origin road may not accept Traffic to or via an embargoed location after the Effective Time. This does not preclude bilateral agreements between carriers that could allow traffic to move using an alternate route.
 - 3. The serving road is not obligated to accept loaded or revenue empty traffic from connections which is intended for interchange to the serving road after the Effective Time. This does not preclude bilateral agreements between carriers that could allow traffic to move using an alternate route.

- B. An Embargo other than an "Effective Immediately Embargo" becomes effective 11:59 P.M. of the date specified and no Traffic will be accepted for movement except as specified in Paragraph [IV.B.1](#) below:
 - 1. An origin road will accept loaded traffic for movement to or via embargoed locations not to exceed 48 hours after the effective date of the embargo and then only for Traffic loaded or in the process of loading prior to the effective date of the embargo. Empty cars, trailers, and/or containers in route to shippers loading facilities do not qualify as being in the process of loading.
 - 2. The serving road will accept loaded Traffic from connections which was originated in accordance with the provisions of Paragraph [IV.B.1](#).

V. **AMENDMENTS AND CANCELLATIONS**

Amendments or parts thereof reducing restrictions and embargo cancellations become effective immediately on submission to the Association of American Railroads and reviewed by the AAR administrator unless otherwise specified therein. Amendments or parts thereof increasing restrictions will have an effective date subject to Section IV-A or IV-B (as applicable) of this Circular.

- A. When an embargo is amended, the portions of the original restrictions remaining in effect shall be considered continuous in application. Amendments shall be consecutively numbered and, in each case, shall state the reason for the change.
- B. Railroads will cancel embargoes immediately upon removal of cause for which embargo was issued.

VI. **PERMITS**

- A. An embargo may contain provision for a permit system to provide controlled movement of Traffic, including permits for special emergency situations where there is public necessity for special transportation relief. Where a permit system is used, the embargo will contain the name and contact information for the party responsible for the issuance of permits.
- B. Railinc, acting as the agent for the Association of American Railroads and for the railroads submitting embargoes will maintain an electronic AAR Embargo and Permit System to forward Embargo Numbers and Embargo Permit Numbers reported in an EDI 417 Transportation Waybill to railroads listed in the routing.
- C. When a permit number is used to move a shipment; the shipper is required to furnish the Embargo Number and Permit Number in accordance with ANSI EDI 404 (Bill of Lading) Guidelines. The Embargo Number must be transmitted in the N901 EN Qualifier and the Permit Number must be transmitted in the N902 EB Qualifier. Failure to provide this information will result in shipments being held or billing rejected.

VII. **WATER CARRIERS**

Water carriers listed in [Appendix A](#) of the Association of American Railroads Circular TD-1, have agreed to transmit embargoes, amendments or cancellations thereof, issued by them to the Association of American Railroads and to connecting rail carriers. In turn, the Association of American Railroads shall transmit embargo notices to the water carriers. Water carrier embargo notices transmitted to the Association of American Railroads shall be issued in the name of the originating water carrier. Embargoes issued by such water carrier will be observed by the railroads in the same manner as those issued by railroads. In the event of failure of the water carrier to receive Traffic currently, and to issue formal embargo notice, it shall be incumbent on connecting rail carriers to issue individual embargoes covering the Traffic involved, in the same manner as against individual receivers.

VIII. **REISSUANCE**

Each embargo will automatically expire one year after the effective date of issuance unless request is made to the Association of American Railroads for re-issuance. Re-issuance request must include a new number in accordance with Paragraph [III.F](#).

By direction of,

Nichole Fimple

AVP Business Services/Executive Dir. Rules and Standards
Association of American Railroads

Circular TD-1—Appendix A.
Water Carriers Which Have Agreed to Exchange Embargo
Information through Embargo Headquarters

Nichole Fimple, AVP Business Services/Executive Dir. Rules and Standards, Association of American
Railroads 425 3rd St SW #1000, Washington, D.C. 20024
CSC@Railinc.com

Name of Line, Title of Designated Embargo Officer and Address

**Alaska-British Columbia Transportation
Co.**

E. D. Anderson, Mgr. of Pricing
P.O. Box 2287
Seattle, Wash. 98111

American Commercial Barge Line Co.

W. A. Kernan, Vice President--Traffic
1701 East Market St.
Jeffersonville, Ind. 47130

Arnold Freight Company

Paul W. Brown, President
303 Ferry Ln
St Ignace, Mich. 49781

Boyer Towing, Inc.

Albert Halvorsen, President
Route 7, Box 7824
Bainbridge Island, Wash. 98110

Canada Steamship Lines, Ltd.

R. J. Paquin, Frt. Traf. Mgr.
P.O. Box 100, Montreal, Que.

Federal Barge Lines

H. E. Mueller, Traf. Mgr.
611 E. Marceau St.
St. Louis, Mo. 63111

Foss Launch & Tug Co.

C. J. Harrison, T.M.
660 West Ewing Street
Seattle, Wash. 98119

**The Intercoastal Steamship Freight
Association**

D. R. Sloane, Chairman
17 Battery Place
New York, N.Y. 10004
Includes:

Calmar Steamship Corp.
Pope & Talbot, Inc.
Sea-Land Service, Inc.
States Marine Lines, Inc.
United States Lines, Inc.
Weyerhaeuser Company

Kingcome Navigation Co., Ltd.

North Foot of Columbia
Vancouver, B.C.

Mississippi Valley Barge Line Co.

M. J. Kimutis, Traf. Mgr.
411 N. Seventh St.
St. Louis, Mo. 63101

Northern Navigation Co.

(See *Canada Steamship Lines, Ltd.*)

Norfolk, Baltimore & Carolina Line, Inc.

E. J. Tunney, Gen. Traf. Mgr.
937 Water St., Norfolk, Va.

Peninsular & Occidental Steamship Co.

K. A. Osborne, V.P. & G.M.
P.O. Box 1349, Miami, Fla. 83101

Puget Sound Freight Lines

L. S. Carlander, V.P. Traffic
P.O. Box 24526
Seattle, Wash. 98124

River Lines, Inc.

W. Larrimore, T.M.
Wigle & Larrimore
260 California St.
San Francisco, Calif. 94111

Seaspan International, Ltd.

W. G. Sutherland, Mgr. Rail
Offices: 10 Pemberton Ave. North Vancouver,
B.C. V7P 2R1

345 Harbour Rd. Victoria, B.C.

Seatrail Lines, Inc.

J. Hodgson, Jr., G.T.M.
595 River Rd., Edgewater, N.J. 07020

TMT Trailer Ferry, Inc.

A. H. F. Dimmling, Mgr. of Intermodal Oprns.
P.O. Box 2110
Jacksonville, Fla. 32203

Union Mechling Corp.

R. M. Tyrie, G.T.M.
1 Oliver Plaza
Pittsburgh, Pa. 15222

Western Transportation Co.

R. F. Ditewig, T.M.
550 N.W. Front Ave.
Portland, Ore. 97209